

## REMARKS

### **I. Overview**

Claims 1-26 and 31 are pending in the present application. The outstanding issues raised in the Office Action of November 2, 2007 (*Office Action*) are as follows:

- Claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0107830 (*Nanja*) in view of U.S. Patent Application Publication No. 2003/0005455 (*Bowers*) and further in view of U.S. Patent Application Publication No. 2007/0094086 (*Ikezawa*);
- Claims 6, 14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers* and *Ikezawa* and further in view of U.S. Patent Application Publication No. 2004/0199635 (*Ta*); and
- Claims 1, 9, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of U.S. Patent Application Publication No. 2002/0146008 (*Kaplan*).

In response, Applicant respectfully traverses the outstanding claim rejections and requests reconsideration and withdrawal in light of the remarks presented herein.

### **II. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja* in view of *Bowers* and *Ikezawa***

Claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers* and further in view of *Ikezawa*. *Office Action*, at pages 2 and 8. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

It is well settled that “[t]he examiner bears the initial burden of factually supporting any *prima facie* case of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.” MPEP § 2142. To make a *prima facie* case of obviousness, the Examiner must determine the “scope and

content of the prior art,” ascertain the “differences between the prior art and the claims at issue,” determine “the level of ordinary skill in the pertinent art,” and evaluate evidence of secondary considerations. *Graham v. John Deere*, 383 U.S. 1, 17, (1966); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. \_\_\_\_ (2007); *see also* M.P.E.P. § 2141. When determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. M.P.E.P. § 2141.02(I).

The Supreme Court in *KSR* stated that it is “important [for an examiner] to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. *KSR Int’l Co. v. Teleflex, Inc.*, No. 04-1350, slip op. at 14 (U.S. April 30, 2007). Indeed, the Court indicated that there should be an “explicit” analysis regarding “whether there was an *apparent reason* to combine the known elements *in the fashion claimed* by the patent at issue.” *Id.* (emphasis added). Further, the Court did not totally reject the use of “teaching, suggestion, or motivation” test as a factor in the obviousness analysis. *Id.* at 14-15.

#### A. Insufficient Reason to Combine

The rejection of claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31 should first be withdrawn because the combination of *Nanja* with *Bowers* and *Ikezawa* is improper. In support for the combination of *Bowers* and *Nanja*, the Examiner states that:

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teachings of *Bowers* into the teachings of *Nanja* for the purposes of increasing the network resources efficiency (paragraph 9-11).

*Office Action*, at p. 3.

However, Applicant maintains that the teaching of “aggregation” provided in *Nanja* is very different from the “aggregation” provided in *Bowers*. For instance, *Nanja* aggregates different data retrieved from different sources as requested by a single user. *E.g.*, *Nanja*, at Abstract. In contrast, *Bowers* aggregates requests (*not* retrieved data itself) originated by

different users (*not* a single user) for the same data (*not* different data) provided by a single source (*not* different sources). *Bowers*, at Abstract.

Applicant has repeatedly pointed out that *Nanja* and *Bowers* are so different from each other that there is no indication that the use of both aggregation methods together would “increase network resources efficiency,” as contended by the Examiner. In fact, the use of both aggregation methods seems to involve the duplication of at least some aggregation efforts, and thus would be detrimental to the efficiency of *Nanja*’s network. Moreover, it is not immediately appreciable how the “aggregation” of *Bowers* would work together with the “aggregation” of *Nanja*, if at all. Thus, Applicant further submits that a combination of *Bowers* with *Nanja* would require a substantial reconstruction and redesign of the elements shown in *Nanja*, as well as a change in the basic principle under which *Nanja* was designed to operate. See *In re Ratti*, 270 F.2d 810, 843, 123 USPQ 349, 352 (CCPA 1959).

In response to the above arguments, the Examiner has failed to offer any explanation whatsoever in support of the contention that the combination of *Bowers* teaching with *Nanja* would not only work, but also result in an increase in the network resource efficiency in the resulting system.

Accordingly, the combination of at least *Nanja* with *Bowers* is improper, and Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 1-5, 7-8, 9-13, 15-16, 17-21, 23-26, and 31.

**B. Lack of All Claimed Elements****1. Independent Claim 1**

Independent claim 1 recites:

aggregating said information preferences received from said plurality of subscribers into aggregated information preferences, wherein at least two of said aggregated information preferences correspond to different data of said same data source provider . . . .

The Office Action concedes that *Nanja* does not teach or suggest the above-identified element, but relies upon *Bowers* as teaching or suggesting this element. *Office Action*, at pages 2-3. However, claim 1 recites that two or more of the aggregated information preferences correspond to different data of a same data source provider. In contrast, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . . .”) (emphasis added). Applicant respectfully submits that neither *Nanja* nor *Bowers* teaches or suggests this claimed element.

The Examiner introduces *Ikezawa* on page 4 of the Office Action and appears to rely somewhat on *Ikezawa* in combination with *Bowers* as disclosing the above element of claim 1. The Office Action asserts on page 4 that the “Ikezawa et al. reference is only used to show that a server can receive multiple requests on different data and provide different data to one or more users (paragraph 446).” However, even assuming that this assertion by the Examiner is true, the mere showing that a server can receive multiple requests on different data and provide that different data to one or more users falls short of teaching or suggesting aggregating different data of a same data source provider, as recited by claim 1. Indeed, when considered in light of the express teaching of *Bowers*, one is lead to aggregate those requests for *the same* data, and merely because different data can be requested in *Ikezawa* does not lead to an aggregation of preferences that correspond to different data, as recited by claim 1. For instance, even assuming that *Bowers* allows for its server to receive multiple requests on different data, *Bowers* would appear to perform its aggregation to aggregate those requests that are for the same data. Thus, the applied combination does not teach or suggest

aggregating information preferences received from a plurality of subscribers where at least two of the aggregated information preferences correspond to different data of a same data source provider.

In addition, Applicant maintains that *Bowers* only discloses aggregating requests for specific media streams. *E.g.*, *Bowers* at ¶ [0050]. Clearly, *Bowers*' requests for streaming media files do not specify "types" of media files selected by a subscriber insofar as they must identify the desired media files themselves. *Id.* at ¶ [0015] and [0033].

Therefore, the combination of *Nanja*, *Bowers*, and *Ikezawa* even if proper, does not teach or suggest every element recited in claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 1.

## 2. Independent Claim 9

Independent claim 9 recites "means for assembling two or more of said information preferences gathered from said plurality of subscribers that correspond to different data of a same data source provider into an aggregate preference. . . ." Similarly as noted above with respect to claim 1, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] ("aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . .") (emphasis added). Even if *Bowers* allows for its server to receive multiple requests on different data (as the Examiner asserts with reliance on *Ikezawa*), *Bowers* would appear to perform its aggregation to aggregate those requests that are for *the same* data. Thus, the applied combination does not teach or suggest the above element of claim 9.

Therefore, the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest every element recited in claim 9. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 9.

3. Independent Claim 17

Independent claim 17 recites:

code for assembling said one or more preferences received from said plurality of subscribers into an aggregate preference, wherein at least two of said assembled one or more preferences correspond to different data of a same information source provider . . . .

Again, *Bowers* only discloses aggregating requests that correspond to the same data of the same data source provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . . .”) (emphasis added). Even if *Bowers* allows for its server to receive multiple requests on different data (as the Examiner asserts with reliance on *Ikezawa*), *Bowers* would appear to perform its aggregation to aggregate those requests that are for *the same* data.

Therefore, Applicant respectfully asserts that the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest at least this element recited in claim 17. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 17.

4. Independent Claim 25

Independent claim 25 recites:

aggregating, by said enhanced broadcast server, said preferences of said plurality of subscribers for different information available from one of said at least one data provider to form a superset of said information that is of interest to said plurality of subscribers. . . .

The Office Action concedes that *Nanja* does not teach or suggest this element of claim 25, but relies upon *Bowers* as teaching or suggesting this element. *Office Action*, at pp. 9-10. However, Applicant submits that *Bowers* does not teach or suggest aggregating preferences of a plurality of subscribers for different information available from one of at least one data provider. *E.g.*, *Bowers* at ¶¶ [0050] and [0051] (“aggregation module 102 aggregates requests for *the same* real-time streaming or continuous feed . . . .”) (emphasis added). Even if *Bowers* allows for its server to receive multiple requests on different data (as

the Examiner asserts with reliance on *Ikezawa*), *Bowers* would appear to perform its aggregation to aggregate those requests that are for *the same* data.

Therefore, Applicant respectfully asserts that the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest at least this element recited in claim 25. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claim 25.

5. Dependent Claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26 and 31

As noted above, the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, does not teach or suggest every element recited in independent claims 1, 9, 17, and 25. Dependent claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26, and 31 each depends from one of claims 1, 9, 17, and 25, and thus each dependent claim inherits all the elements of its respective independent claim. Consequently, the combination of *Nanja*, *Bowers*, and *Ikezawa*, even if proper, also fails to teach every element of dependent claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26 and 31. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 2-5, 7, 8, 10-13, 15, 16, 18-21, 23, 24, 26 and 31.

**III. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja*, *Bowers*, *Ikezawa* and *Ta***

Claims 6, 14, and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Bowers*, *Ikezawa*, and *Ta*. *Office Action*, at p. 6. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

**A. Lack of All Claimed Elements**

As noted above, the combination of *Nanja*, *Bowers*, and *Ikezawa* fails to teach or suggest every element recited in independent claims 1, 9, and 17. The Examiner does not rely upon *Ta* as curing the above-noted deficiencies, nor does it appear to do so. Therefore, the combination of the combination of *Nanja* with *Bowers*, *Ikezawa*, and *Ta*, even if proper, fails to teach or suggest all of the elements of independent claims 1, 9, and 17. Dependent claims 6, 14, and 22 depend from claim 1, 9, and 17, respectively, each dependent claim thus inheriting all the features of its respective independent claim.

Consequently, the combination of the combination of *Nanja* with *Bowers*, *Ikezawa*, and *Ta*, even if proper, also fails to teach or suggest all of the elements of dependent claims 6, 14, and 22. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 6, 14, and 22.



#### IV. Claim Rejections Under 35 U.S.C. § 103(a) over *Nanja* and *Kaplan*

Claims 1, 9, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Nanja* in view of *Kaplan*. *Office Action*, at p. 7. Applicant traverses the rejection and asserts that the claims are allowable, at least, for the reasons stated below.

##### A. Lack of All Claimed Elements

Independent claim 1 recites “aggregating said information preferences received from said plurality of subscribers into aggregated information preferences, wherein at least two of said aggregated information preferences correspond to different data of said same data source provider.” The Examiner concedes that *Nanja* does not teach or suggest this element of claim 1, but relies solely upon *Kaplan* as teaching or suggesting this element. *Office Action*, at pp. 7-8. However, *Kaplan* only discloses aggregating requests “by cell,” without regard to whether the data being requested correspond to the same data source provider. *E.g.*, *Kaplan* at ¶¶ [0063] (“a client-server cellule . . . advertises the aggregated subscriptions of all its clients to its neighbor cellule . . .”).

In response to the above, the Office Action maintains on pages 12-13 thereof that *Kaplan* discloses the above element of claim 1. The Office Action asserts (at pp. 12-13):

The aggregated subscription is used to request service or data within at least one cell (paragraph 59-63). A group of cells forms a common local area network (LAN) (paragraph 34-37) and LAN is commonly known to be own by one service provider or data source provider. Therefore, Kaplan teaches aggregating information preferences received from a plurality of subscribers into aggregated information preferences, wherein at least two of said aggregated information preferences correspond to different data of said same data source provider.

Applicant respectfully disagrees. First, *Kaplan* does not define its cells as forming a common local area network. For instance, at paragraphs 0035-0038, *Kaplan* clearly describes that a cell “is a set of network-connected message processors”, and further describes (in paragraphs 0037-0038) that the cell may comprise message processors connected not only by a LAN (as contended by the Examiner) but also message processors connected by a metropolitan area network (MAN) and “a set of processors in different cities communicating with one another over a wide area network (WAN).”

Secondly, even if a cell in *Kaplan* is made up of message processors connected by a LAN, this fails to teach or suggest the above element of claim 1. The Examiner appears to contend that the LAN is owned by one service provider, and thus concludes that the information provided to the clients is from a single data source. This is an inaccurate characterization of *Kaplan*. Even if the LAN that is the inter-connecting network between the clients is owned by a single service provider in *Kaplan*, the LAN is merely the network structure over which messaging may be performed. The LAN itself (or the owner of the LAN) is not the “data source” of the messages being communicated in *Kaplan*. As described in paragraph 0039 of *Kaplan*, “Messages originate at publishing client machines and are delivered to subscribing client machines.” Thus, it is the publishing client machines in *Kaplan* who are the data sources, and any LAN, MAN, WAN, or other inter-connecting network infrastructure is merely the supporting architecture for carrying the data to be communicated from one client to another.

As an analogy, suppose that a first person writes a letter to a second person, and further suppose that the first person sends the second person the letter via U.S. Mail. The U.S. Mail service carries the letter from the first person to the second person, but while the U.S. Mail service enables delivery of the letter, the U.S. Mail is not the “source” of the letter. Instead, it is the first person who is the “data source”. Similarly, even if the clients are interconnected by a commonly-owned LAN in *Kaplan*, such LAN does not constitute a single data source.

In view of the above, Applicant respectfully submits that neither *Nanja* nor *Kaplan* teach or suggest this claimed element.

Therefore, the combination of *Nanja* and *Kaplan* does not teach or suggest every element recited in claim 1. Claims 9 and 17 recite similar elements and thus are patentable for at least the same reasons. Accordingly, Applicant respectfully requests that the Examiner withdraw the 35 U.S.C. § 103(a) rejection of record with respect to claims 1, 9, and 17.

## **V. Conclusion**

In view of the above, Applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. M066 from which the undersigned is authorized to draw.

Dated: February 1, 2008

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: February 1, 2008

Signature: Donna Forbit  
(Donna Forbit)

Respectfully submitted,

By Jody C. Bishop

Jody C. Bishop

Registration No.: 44,034

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, Texas 75201-2784

(214) 855-8007

(214) 855-8200 (Fax)

Attorney for Applicant